

1 **REMARKS**

2 Applicant hereby responds to the July 6, 2005 Advisory Action, which is in further
3 response to the Office Action dated December 16, 2004 in which the Examiner reiterated his
4 rejection of claims 25-68 and 98 under 35 U.S.C. §§ 102 and/or 103 in view of Henkel, German
5 Patent No. 2,624,690 ("Henkel"), Goldwell, German Patent No. 19,721,785 ("Goldwell") and/or
6 Yoshihara, U.S. Patent No. 5,332,581 ("Yoshihara"). Applicant respectfully submits that the
7 foregoing remarks will highlight the manifest differences between the amended claims and the
8 cited references such that it becomes apparent to the Examiner that these rejections should be
9 reconsidered and withdrawn.

10 The Examiner rejected claims 25-47, 50-68 and 98 under 35 U.S.C. § 102 as being
11 anticipated by Henkel and/or Goldwell. Applicant respectfully submits that the Examiner's
12 continued reliance on Henkel and Goldwell is misplaced. It is black letter law that to be
13 anticipatory, a prior art reference must disclose each and every element of the claim or claims at
14 issue. Applicant respectfully submits that Henkel and Goldwell fail to disclose each and every
15 element of independent claim 25 as amended.

16 Specifically, Henkel merely discloses the discovery that two particular direct blue dyes,
17 namely brilliant blue R 28032 and lilac R 5283, are stable in bleaching compositions and are well
18 absorbed by the hair. Henkel teaches a three part blonding mixture for hair which is comprised
19 of an aqueous solution of dyes, an aqueous solution of hydrogen peroxide, and solid ammonium
20 persulfate. However, Henkel fails to disclose the use of dyes in the relevant percentage range as
21 required by amended claim 25. Indeed, Henkel discloses that the total quantity of dyestuff
22 combination to be used is between 0.015 to 0.3% by weight of the disclosed blonding mixture.

1 See Henkel, p.4 lns. 15-17. This is in stark contrast to the present invention. The present
2 composition is mixed just prior to application, which allows a greater amount of dye to be
3 incorporated into the composition because of its inherent instability. Advantageously, this allows
4 the present invention to provide a one step method for coloring and/or highlighting hair up to ten
5 levels (i.e., ten shades lighter than the original shade). This is a drastic improvement over the
6 prior art, which generally utilizes a two step method to color hair up to seven levels.
7 Accordingly, the present invention provides a single composition for coloring and highlighting
8 hair without causing undue hair damage due to double processing.

9 Regarding the Examiner's rejections based on Goldwell, Applicant submits that the
10 reference does not teach or suggest the principle improvement disclosed by the current invention.

11 To the contrary, Goldwell teaches away from the present invention by relying on a combination
12 of a xanthene-based hair dyeing agent, a peroxide based developer, and a persulfate based
13 bleaching compound. The present invention, on the other hand, discloses that xanthene-based
14 compositions are not suitable for use by the large number of individuals who have sensitive or
15 treated hair.

16 Indeed, Goldwell discloses a composition which contains xanthene gum, thereby falling
17 outside the scope of the current invention, which specifically excludes such compositions in the
18 amended claims. In addition, Goldwell is virtually identical to Japanese Patent Publication No.
19 08175940 (cited in the current application on page 2), since both disclose a product containing a
20 xanthene-based dyeing agent not suitable for use by those with sensitive or chemically treated
21 hair.

1 Regarding the Examiner's 35 U.S.C. §103 rejections, it is well settled law that in order
2 for a claimed invention to be obvious, either alone or in view of a combination of references, the
3 prior art references, when combined, must teach or suggest all of the claim limitations. *In re*
4 *Vaech*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MANUAL OF PATENT EXAMINING
5 PROCEDURE § 2143-2143.03.


6 Applicants respectfully submit that no combination of references teach the claimed
7 invention. Since Goldwell, Henkel, and Yoshihara fail to teach each and every claim limitation
8 for the reasons enumerated above, the references, either alone or in combination, fail to disclose
9 each and every element of amended claim 25. As such, the rejection under 35 U.S.C. §103 is
10 improper and should be withdrawn.

1 CONCLUSION

2 In view of the foregoing, applicant respectfully submits that the present invention
3 represents a patentable contribution to the art and the application is in condition for allowance.
4 Early and favorable action is accordingly solicited.

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Respectfully submitted,



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